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Nos. ~~9~~

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# In the Supreme Court of the United States

OCTOBER TERM, 1956

UNITED STATES OF AMERICA, PETITIONER

v.

THE SHOTWELL MANUFACTURING COMPANY, BYRON A.  
CAIN, FRANK J. HUEBNER, AND HAROLD E. SUL-  
LIVAN

THE SHOTWELL MANUFACTURING COMPANY, BYRON A.  
CAIN, FRANK J. HUEBNER, AND HAROLD E. SUL-  
LIVAN, CROSS-PETITIONERS

v.

UNITED STATES OF AMERICA

MOTION TO REMAND (AMENDED)

J. LEE RANKIN,

*Solicitor General,*

CHARLES K. RICE,

*Assistant Attorney General,*

*Department of Justice, Washington 25, D. C.*

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UNITED STATES OF AMERICA

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## MOTION TO REMAND (AMENDED)\*

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The Solicitor General, on behalf of the United States, respectfully moves that this case, now pending in this Court on the Government's petition for a writ of certiorari and on respondents' cross-peti-

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\*The motion was originally filed on October 15, 1956. In order to supplement the Appendix by including an additional affidavit, dated November 6, 1956 (Exhibit E, *infra*, pp. 22-23), and to correct certain minor errors in the original motion, this amended motion is being filed.

tion, be remanded to the District Court. The reasons for granting this motion are set forth below:

A detailed summary of most of the pertinent facts of record will be found in the Government's petition and defendants' cross-petition. Briefly, defendants were indicted for wilful evasion of income taxes. They moved that certain evidence be suppressed on the ground that it had been voluntarily disclosed to the Government in reliance upon Treasury Department policy. After a three-day pre-trial hearing, the District Court held that the disclosure was neither complete nor made in good faith, and defendants were ultimately found guilty by a jury. The Court of Appeals reversed, holding that the disclosure was in good faith, that it was in complete compliance with the policy, *and* that it was timely. The District Court had not, however, ruled upon the issue of timeliness. Cf. *United States v. Lustig*, 163 F. 2d 85, 88 (C. A. 2d), certiorari denied, 332 U. S. 775; *Lapides v. United States*, 215 F. 2d 253, 255-256 (C. A. 2d).

In all the proceedings in the courts below, and in its petition for certiorari (pp. 10-12), the Government accepted as a fact testimony that defendant Cain and the corporation's accountant, Busby, met with Ernest J. Sauber, then Chief Deputy Collector, some time *early in 1948*, at which time they revealed to him the fact that the corporation had not reported receipts from black market transactions. The Government also had no reason to doubt Busby's testimony that he prepared the disclosure figures during an intensive investigation lasting several months. None

of the several Department of Justice attorneys who handled the prosecution suspected, so far as we can determine, that this was not so.<sup>1</sup>

Now, as the result of an investigation begun by the National Office of the Internal Revenue Service in the early part of 1955, over a year after the conclusion of the trial,<sup>2</sup> additional evidence has come to light.<sup>3</sup> This evidence gives substance and meaning to other evidence<sup>4</sup> in the record and to other facts known to the Department of Justice and the Internal Revenue Service, the full significance of which had not previously been appreciated. Should the District Court be given an opportunity to receive this new evidence, it would support a finding that defendants did not attempt to make a voluntary disclosure until *July 1948*, after a revenue agent, acting on instructions from his superior, had already obtained evidence of the corporation's unreported receipts. It would also support a finding that Busby's figures were all prepared during the space of a few days in the month of July.<sup>5</sup>

<sup>1</sup> See Exhibit C, *infra*.

<sup>2</sup> See Exhibit A, *infra*.

<sup>3</sup> See Exhibit B, *infra*, paragraphs 4-5; and Exhibits D and E, *infra*. The late Assistant United States Attorney Edward Ryan, who represented the Government at the hearing on the motion to suppress, was aware of some of these facts, but he was prevented from perceiving their significance by the manner in which they were presented to him. (See Exhibit C, *infra*.)

<sup>4</sup> As a result of this new evidence, the Department of Justice has begun a grand jury investigation to determine whether various indictable offenses may have been committed, including perjury, obstruction of justice, and conspiracy to evade some taxes for years other than those involved in the present case. <sup>5</sup> An injunction filed by the defendants to prevent the Government from present-

As appears from the attached affidavits (set out in the Appendix, *infra*) of the officials of the Internal Revenue Service and the Department of Justice who had immediate responsibility for the case, it was not until November 1955, after the Government's petition for certiorari was filed, and only as a result of the full-scale investigation begun in April 1955 into possible misconduct and wrongdoing on the part of Internal Revenue Service personnel in the Chicago office, that this new evidence was discovered. And it is equally apparent, we believe, that the failure of the Government to discover and present such evidence to the court at an earlier date was not attributable to any lack of due diligence.<sup>5</sup>

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ing evidence to the grand jury was denied by the district court on April 17, 1956. The Court of Appeals affirmed this order on May 11, 1956.

As a further result of the Internal Revenue Service investigation, a number of charges were preferred against Sauber, one arising, in part, out of his conduct relative to the alleged disclosure in this case, and others based on his handling of other unrelated cases. He was placed on administrative annual leave on December 2, 1955, suspended on March 2, 1956, and removed from office on August 6, 1956. The removal was based on two of the unrelated charges, and no findings were made by the Commissioner as to the charges based on the evidence in this case. The Treasury Department has granted Sauber an extension of time to November 14, 1956, within which to file an appeal to the Secretary.

<sup>5</sup> The Government's petition for certiorari (No. 470, 1955 Term) and the defendants' conditional cross-petition (No. 471) were filed on October 17, 1955. On December 6, 1955, the Solicitor General, in a letter to the Clerk, requested the Court to withhold action on the petitions until the Internal Revenue Service could complete its pending investigation. On June 1, 1956, the Solicitor General informed the Court of the developments in the case to

It may be that this Court would consider, as did Judge Nordbye, that it is unnecessary to go into the question of the timeliness of the alleged voluntary disclosure, because it was inadequate on other grounds. But if that issue be reached, and if this Court were to review the case in its present posture, the record would be inadequate and incomplete. Furthermore, had the evidence now available been presented to the lower courts the rulings under review might conceivably have been altered, for the majority of the Court of Appeals recognized that a "voluntary disclosure" must be timely:

When the revenue agents get the scent and are in pursuit of the miscreant, it is too late for him to seek the protection of the Treasury Department's voluntary disclosure policy. Until then its door is open and the welcome mat is out.

In these circumstances, we submit that the interests of justice would be served by remanding this case to the District Court for a further hearing to amplify

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that date, and requested that consideration of the petitions be further deferred. On June 11, 1956, the Court entered an order granting the Solicitor General's motion (351 U. S. 980).

\* See Petition for Certiorari, No. 9, p. 56.

† The issues of fact and law raised by the alleged voluntary disclosure, in so far as they related to the defendants' motions to dismiss the indictment and suppress the evidence obtained from such alleged disclosure, were decided solely by the trial judge after a pre-trial hearing. (See Petition for Certiorari, No. 9, pp. 6-7.) These issues, and the evidence bearing on them, were not submitted to the jury, except that the jury was allowed to consider the evidence as to the alleged disclosure in so far as it threw light upon the issue of wilfulness as an element of the sub-

the record by enabling the parties to present new, additional evidence on the timeliness of the alleged voluntary disclosure. After such hearing the District Court would make such further findings and orders, if any, as the facts and the law may require. Such remand should be without prejudice to the right of the parties to preserve and renew the points presented in the pending petition and cross-petition.

Respectfully submitted,

J. LEE RANKIN,

*Solicitor General.*

CHARLES K. RICE,

*Assistant Attorney General.*

NOVEMBER 1956.

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stantive offense, i. e., the defendants' "intent" and "good faith" (R. 2968-2970). Cf. *Mesárosh, et al. v. United States*, No. 20, this Term, decided October 10, 1956, opinion of the Court delivered November 5, 1956.



## APPENDIX

### EXHIBIT A

#### AFFIDAVIT

I am a Special Assistant (Enforcement) to the Chief Counsel for the Internal Revenue Service, in Washington, D. C. My duties include the handling of cases and problems assigned to me by the Chief Counsel or the Assistant Chief Counsel (Enforcement) relating to criminal matters.

The criminal aspects of the Shotwell Manufacturing Company case were considered and processed by the Chief Counsel's field office in Chicago. In early March, 1955, at a time when the appeals of Cain, Sullivan, and Huebner, with respect to their conviction for willfully attempting to evade the income taxes of the Shotwell Manufacturing Company for 1945 and 1946, were pending with the Court of Appeals for the Seventh Circuit, there was routed to me for review a matter involving the tax liability of the corporation for the subsequent years 1947, 1948, and 1949. One of the problems was whether negotiations looking toward settlement of the civil tax liabilities of the corporation and Cain for the years 1947, 1948, and 1949 should be undertaken during the pendency of the criminal appeals. Other problems related to the refusal of the corporation to turn over books and records for the years 1944 to 1946, inclusive. My examination of the headquarters file of the Chief Counsel's office with respect to the Shotwell criminal case disclosed that it included excerpts from a report of a revenue agent dated December 13, 1954, covering



Cain's liability for the years 1947 to 1949, inclusive, wherein the agent asserted that Cain was attempting to secure a favorable settlement of his civil liabilities for the later years in order to better his position on appeal in the criminal case. The revenue agent also strenuously objected to the manner in which the Chicago office of the Internal Revenue Service was handling Cain's civil liabilities.

In view of the nature of the aforementioned excerpts, it was clear that the full report required examination. I called this matter to the attention of the Assistant Chief Counsel (Enforcement) and a request was made of the Chicago office that it forward a full copy of the agent's report. That report was received in the National Office in Washington on about March 28, 1955. In his transmittal memorandum, the Regional Counsel at Chicago advised the National Office for the first time that the Inspection Office of the Internal Revenue Service, which has the function of investigating allegations of misconduct and wrongdoing on the part of Internal Revenue Service personnel, had begun an inquiry in the case. The full report disclosed, in addition, that the investigation of the individual income tax returns of Cain and Sullivan for the years 1944 to 1946, inclusive, was still incomplete and that there had been no determination whether these individuals had the use and benefit of the unreported and concealed black market receipts involved in the corporation case for the same years. Such evidence would have been strong corroboration of the charge of wilful attempted tax evasion in the Shotwell case. Furthermore, the revenue agent charged that he had been subjected to intense pressure to submit his report although he considered that his investigation was incomplete and that a full development of all the facts was required.

I discussed the revenue agent's report with the

Assistant Chief Counsel (Enforcement) and he thereafter took the matter up with the Assistant Commissioner, Inspection, among others. Subsequently, in late April 1955, inspectors were assigned to make a full-scale investigation of the administrative handling of the tax cases of Cain and the Shotwell Manufacturing Company.

At the time I first became actively concerned with the Shotwell case in March of 1955, to my knowledge no questions had been raised in the Internal Revenue Service as to the truthfulness of the testimony of former District Director Ernest J. Sauber that in March, 1948, he had been advised of unreported corporate receipts by Cain and his accountant. However, a detailed study of the available material and extensive discussions with the Assistant Chief Counsel (Enforcement) and the Inspectors conducting the investigation gave rise to the strong suspicion that the alleged disclosure might not have taken place in March, 1948. Certainly, by the middle of 1955 this suspicion became firmly fixed. In November, 1955, an inspector assigned to the case brought to the attention of the Chief Counsel's office newly discovered affirmative evidence which was in conflict with the sworn testimony at the suppression hearing before Judge Nordbye that a disclosure had been made in March, 1948. This information, together with other information ascertained by that time, was referred by the Chief Counsel to the Department of Justice on December 1, 1955.

LESTER STEIN.

Sworn to and subscribed before me this 2d day of October, 1956, at Washington, D. C.

[SEAL]

BERNARD L. BAUSERMAN,

*Notary Public, District of Columbia.*

My commission expires October 14, 1958.

## EXHIBIT B

UNITED STATES OF AMERICA,

*District of Columbia, ss:*

I, JAMES YADEN, first being duly sworn according to law, depose and state:

1. That I am currently employed as an Inspector with the Internal Revenue Service. That on April 29, 1955, in my capacity of Internal Revenue Inspector, I was assigned by my superiors to conduct an investigation of the administrative handling of the Shotwell Manufacturing Company, Incorporated, and related income tax cases for the years 1944 to 1949, inclusive, and that since that date I have had this matter under active investigation. On July 13, 1955, Inspector Harvey M. Lyon was assigned to assist in the investigation in question and has been actively engaged in the conduct of the investigation since that date.

2. That during the investigation of this matter my attention was directed to the discrepancies in the data that The Shotwell Manufacturing Company, Incorporated, initially brought to the attention of the Internal Revenue Service the fact that it had not reported all of its receipts for the years 1944, 1945, and 1946. That according to the record of the testimony given at the hearing on the motion to suppress evidence in the United States District Court for the Northern District of Illinois, Eastern Division, on about November 12, 1952, Messrs. Byron A. Cain

and Leon J. Busby placed the date of the initial contact with Chief Field Deputy Collector Ernest J. Sauber as in January 1948, whereas, Ernest J. Sauber's testimony at the same proceeding placed the date of the initial contact by representatives of The Shotwell Manufacturing Company, Incorporated, as on or about March 15, 1948.

3. That witnesses under interrogation by me in October and November 1955, have given statements, based on their personal knowledge that when Special Agent Sam Krane called at the office of The Shotwell Manufacturing Company, Incorporated, on June 21, 1948, and requested, among other things, certain unrecorded invoices of The Shotwell Manufacturing Company, Incorporated, a telephone call was made by Mr. H. Stanley Graflund, in Mr. Krane's presence, to Byron A. Cain, then president of The Shotwell Manufacturing Company, Incorporated, at the Waldorf Astoria Hotel in New York; that Mr. Cain was advised that the special agent had requested certain specific documents and invoices relative to transactions with one David Lubben and General Confections Company, Incorporated; that upon learning of such request, Mr. Cain was surprised, shocked and disturbed; and that, upon terminating the telephone conversation, Mr. Cain turned to his associates, Frank J. Huebner and Harold E. Sullivan, and condemned Mr. Graflund for having given the documents to Mr. Krane.

4. That Mr. Ernest Sauber and Group Supervisor Ralph Johnson stated to me under oath in July, 1955, that they attended a luncheon meeting with Byron A. Cain and Leon J. Busby (at

the expense of Mr. Cain or Mr. Busby) at the Chicago Athletic Club, Chicago, Illinois. That Mr. Johnson testified under oath in July, 1955, in my presence, that this luncheon was held sometime between July 21, 1948, when he had the original and amended 1946 income tax returns of The Shotwell Manufacturing Company, Incorporated, transferred to his group, and July 30, 1948, when the case of The Shotwell Manufacturing Company, Incorporated, was assigned to Internal Revenue Agent Joseph M. Lima for investigation. Group Supervisor Johnson has further testified before me that at this luncheon Mr. Busby displayed figures of the unreported over-ceiling sales received by The Shotwell Manufacturing Company, Incorporated, and offered to turn them over to Jim.

5. That a witness with personal knowledge stated while under interrogation by me in November, 1955, that in July of 1948 a meeting was held in the Belden-Stratford Hotel in Chicago, Illinois, for the express purpose of preparing the underlying documents from which there could be developed a purported voluntary disclosure of unreported over-ceiling receipts of The Shotwell Manufacturing Company, Incorporated, during the years 1944, 1945, and 1946; that these were the figures subsequently turned over to Revenue Agent Lima when he first appeared at the office of The Shotwell Manufacturing Company, Incorporated, in August of 1948; and that this witness has also identified the persons present at this meeting, and has stated that these included Mr. Byron A. Cain, Mr. Frank J. Huebner, Mr. Leon J. Busby, and at least three employees of The Shotwell Manufacturing Company, Incorporated.

6. That Mr. Sauber on July 20, 1955, testified under oath before me that he made no record, notation, or contemporaneous memorandum reflecting or pertaining to any contacts he had with Mr. Cain or Mr. Busby in 1948, specifically during the period when purported attempts were being made in behalf of The Shotwell Manufacturing Company, Incorporated, to disclose to the Internal Revenue Service, unreported over-ceiling sales.

7. That Mr. Johnson, on July 20, 1955, testified under oath before me that he made no record, notation, or contemporaneous memorandum reflecting or pertaining to any discussion had with, or information received from, Mr. Sauber in 1948, respecting the income tax case of The Shotwell Manufacturing Company, Incorporated, or any matter relating thereto.

I have carefully read this statement, consisting of five (5) pages, and it is true, accurate and complete to the best of my knowledge and belief. It has been made freely and voluntarily, without any threats, rewards, promises or duress having been made to or upon me.

JAMES E. YADEN,

*Inspector, Internal Revenue Service.*

Subscribed and sworn to before me this 1st day of December 1955, at Washington, D. C.

DONALD C. ADAMS,

*Inspector, Internal Revenue Service.*

EXHIBIT C

AFFIDAVIT

UNITED STATES OF AMERICA,

CITY OF WASHINGTON,

*District of Columbia, ss:*

JOSEPH M. HOWARD, being duly sworn, deposes and says:

I am now, and have been at all times material herein, an attorney in the Tax Division of the Department of Justice.

The case of United States v. The Shotwell Manufacturing Company, Byron A. Cain, Frank J. Huebner and Harold E. Sullivan, was assigned to me shortly after the notices of appeal from the convictions had been filed. I wrote the brief and argued the case for the Government in the Court of Appeals, and I prepared the draft of the Government's petition for a writ of certiorari.

I accepted as a fact the testimony of Ernest J. Sauber that he had conversations with respondent Cain and his accountant, Busby, early in 1948 concerning certain unreported receipts of the corporation. I also accepted as a fact the testimony of Busby that the summaries and compilations which he submitted in support of the alleged voluntary disclosure of unreported receipts were prepared during an intensive investigation lasting several months. I had no suspicion that this testimony might be untrue until I was informed in November 1955 that there was good cause to believe that there had been no conversation between Sauber, Cain and Busby



concerning the unreported receipts until sometime after Special Agent Krane had asked in June 1948 for records of the corporation's dealings with David Lubben.

The files of the Department of Justice contain statements, similar to the above paragraph, from all the attorneys who took an active part in the case on behalf of the Government, with the exception of the late Assistant United States Attorney Edward Ryan. The files of the Department also contain statements of the attorneys and revenue agents who worked with Mr. Ryan in his conduct of the case, to the effect that Mr. Ryan at no time expressed any suspicion that the above testimony of Sauber and Busby might not be true.

JOSEPH M. HOWARD,  
*Attorney, Tax Division.*

Signed and sworn to before me this 25th day of April, 1956.

W. E. HOUSE,  
*Notary Public.*

My Commission expires January 31, 1960.

## EXHIBIT D

CITY OF CHICAGO,

COUNTY OF COOK,

*State of Illinois, ss:*

### AFFIDAVIT

VINCENT P. RUSSO, being first duly sworn according to law, deposes and says:

I am now, and at all times material hereto have been a trial attorney in the Tax Division of the Department of Justice.

By letter dated April 9, 1956, I was commissioned as a special attorney by the Attorney General of the United States of America under the authority conferred on him by Title 5, United States Code, Section 315. On the same date, Charles A. McNelis, who is an attorney in the Tax Division of the Department of Justice, was likewise commissioned. Both Mr. McNelis and I took the prescribed oath on or about April 10, 1956.

Under my commission I am authorized, among other things, to conduct in the Northern District of Illinois, and any other judicial district where the jurisdiction thereof lies, any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates which district attorneys are authorized by law to conduct.

On April 10, 1956, pursuant to the authority vested in me by my commission, I undertook a grand jury investigation to determine whether various indictable offenses, including but not limited to perjury, ob-

struction of justice, and conspiracy to evade and defeat income taxes, may have been committed by anyone, including the Shotwell defendants, either at the hearing on the motion to suppress evidence or at the trial. My first official act under my commission was to procure the issuance of a *subpoena duces tecum* directed to Leon J. Busby, accountant for the Shotwell Mfg. Co., commanding him to bring with him and to produce before the duly sworn and impaneled April 1956 Term Grand Jury, on April 16, 1956, certain documents.

On April 11, 1956, Homan Mfg. Co., Inc., a corporation formerly named Shotwell Mfg. Co., Byron A. Cain, Harold E. Sullivan and Frank J. Huebner filed a Complaint and Petition in the United States District Court for the Northern District of Illinois, Eastern Division, naming me, Mr. McNelis and one Charles J. Mammel, an Internal Revenue Agent, as defendants. The plaintiffs sought to enjoin us from presenting evidence to the grand jury and to quash the *subpoena duces tecum* that had been served on Busby.

On April 12, 1956, Mr. McNelis and I, *pro se* and as attorneys for defendant Mammel, filed a Motion to Dismiss the Complaint and Petition on the ground that it failed to state a cause of action upon which relief could be granted. The Complaint and Petition was dismissed by the District Court on April 17, 1956. On the same day the plaintiffs filed a Notice of Appeal and on April 18, 1956, the Court of Appeals entered an order staying the force and effect of the *subpoena duces tecum* that had been served on Busby. The appeal was argued on May 2, 1956 and on May 11, 1956, the Court of Appeals affirmed the order of the District Court. *Homan*

*Mfg. Co., et al. v. Vincent P. Russo, et al.*, 233 F. 2d 547.

From April 11, 1956, when the injunction suit was filed, to July 12, 1956, the grand jury was in recess with respect to any and all matters relating to the defendants in the Shotwell case. However, during the period in which the grand jury was in recess I personally interviewed and interrogated many witnesses.

From the record of the testimony given on November 12, 1952, at the hearing on the Motion to Suppress Evidence in the United States District Court for the Northern District of Illinois, Eastern Division, it appears that Byron A. Cain and Leon J. Busby fixed the date of the initial contact with Ernest J. Sauber, then Chief Field Deputy Collector, for the purpose of making a voluntary disclosure, as January 1948. From Sauber's testimony given at the same hearing on November 13, 1952 it appears that he fixed such date as on or about March 15, 1948.

From statements of fact within the personal knowledge of witnesses interviewed and interrogated by me, and from facts and circumstances already in the record, it appears that prior to June 21, 1948 when Special Agent Sam Krane called at the office of the Shotwell Mfg. Co. and requested, among other things, certain records evidencing shipments of merchandise for which no invoices were rendered and for which payment had been received but concealed from the corporate books and records, no disclosure, voluntary or otherwise, had been made by Busby and Cain to Sauber or to any other official or employee of the Internal Revenue Service.

Special Agent Krane's request for records precipitated a telephone call from H. Stanley Graflund, the Comptroller of the Shotwell Mfg. Co., to Byron A.

Cain, president of Shotwell, who was then at the Waldorf Astoria Hotel in New York City. Graflund informed Cain of Special Agent Krane's visit and request for documents and of the fact that he had furnished Krane with the documents requested. Cain was upset, swore and used some profanity, and asked Graflund why he had given the records to Krane.

One Edward T. Urban, an officer of Close & Co., candy manufacturers, also the recipient of black market money from David Lubben, the government's principal witness against the Shotwell Mfg. Co., Byron A. Cain, Harold E. Sullivan, and Frank J. Huebner, has informed me that sometime within the first three weeks of July 1948, at the invitation of Frank J. Huebner, he met and had lunch with Huebner and Harold E. Sullivan at the Chicago Athletic Club; that during the luncheon there was discussed a contemplated purchase by the Shotwell Mfg. Co., Close & Co., and others, who had received overceiling currency payments from Lubben, of Lubben's companies for the purpose of acquiring and destroying the books and records of such companies; and that the acquisition and destruction of such books and records would remove evidence against the proposed purchasers with respect to monies that they had received from Lubben.

Mr. Urban asserted that the discussion at the luncheon positively did not relate to the acquisition of Lubben's books and records for use in accumulating data and figures to be used in the making of any disclosure to the government by the Shotwell Mfg. Co.

From the record it also appears that Sauber testified that immediately after Busby's initial contact with him on or about March 15, 1948, he immediately telephoned one Ralph Johnson, group supervisor, Office of Internal Revenue Agent in Charge, and re-

lated the conversation he had had with Busby. Johnson has stated to me that he received no telephone call from Sauber in connection with any purported disclosure to Sauber by Busby or by Busby and Cain in either March or April 1948; that he did receive a telephone call from Sauber sometime prior to July 21, 1948, perhaps sometime in May or June of that year.

Johnson also stated that in a conversation with Sauber prior to the hearing on the Motion to Suppress Evidence, Sauber asked Johnson whether he could state that Sauber had consulted him around March 1948 about the advisability of filing amended returns or the making of a voluntary disclosure in connection with Shotwell's failure to report income resulting from overceiling sales of merchandise. Johnson asserts that he informed Sauber that he "could not go back that far." In this connection, it is pertinent to note that Johnson was not called as a witness at either the suppression hearing or at the trial.

From Busby's testimony in the record it appears that he and members of his staff compiled the data in Government Exhibits 186 and 189, A, B, C, D, and E (the alleged disclosure documents) from the first of February 1948 through the first part of June 1948, or thereabouts.

From statements of fact made to me by witnesses with personal knowledge, it appears that Government Exhibits 186 and 189 A, B, C, D, and E were compiled during the space of a day or two at a meeting at the Belden-Stratford Hotel in Chicago, Illinois, in late July 1948; that no member of Busby's staff aided, assisted or participated in the preparation and compilation of such exhibits; and that such exhibits were prepared and compiled by Leon J. Busby and the

following officers or employees of the Shotwell Mfg. Co.: Byron A. Cain, Frank J. Huebner, H. Stanley Graflund, Howard Roeser and Martin Ericson.

VINCENT P. RUSSO,  
*Trial Attorney, Tax Division.*

Signed and sworn to before me this 19th day of September, 1956.

[SEAL] RUTH I. QUINLAN, *Notary Public.*

My Commission expires June 19, 1958.



EXHIBIT E

AFFIDAVIT

UNITED STATES OF AMERICA,

CITY OF WASHINGTON,

*District of Columbia, ss:*

CHARLES A. McNELIS, being duly sworn, deposes and says:

I am now, and have been at all times material herein, an attorney in the Tax Division of the Department of Justice.

By letter dated April 9, 1956, I was commissioned as a special attorney by the Attorney General of the United States of America and since that time I have assisted Vincent P. Russo in a grand jury investigation in the Northern District of Illinois to determine whether various offenses in violation of Federal laws may have been committed in said District.

In assisting Mr. Russo I personally have interviewed and interrogated many witnesses outside the presence of the grand jury and have been present while other Federal Government employees, including Mr. Russo, have interviewed and interrogated witnesses.

I have read the affidavit of Vincent P. Russo, Exhibit D, and know all facts alleged therein to be true.

More particularly I wish to state that:

Edward T. Urban has informed me that he attended a meeting, sometime within the first three weeks of July 1948, with Harold E. Sullivan and Frank J. Huehner and discussed with them a plan whereby they and others would acquire Lubben's books and

records for the purpose of destroying them so that evidence of unreported receipts would not be available to the Government.

Ralph Johnson, Internal Revenue Service, Chicago, Illinois, has stated to me that in a conversation with Ernest J. Sauber, prior to the hearing on the Motion to Suppress Evidence, he told Sauber he could not go back as far as March 1948 in fixing the time when Sauber first contacted him about the Shotwell case; that he did receive the first call from Sauber on the Shotwell case prior to July 21, 1948, but not before May 1948; that he is definitely sure that Sauber did not contact him in March or April 1948.

From statements made to me by witnesses with personal knowledge of the facts Shotwell's alleged disclosure documents, Government Exhibits 186 and 189, A-E, inclusive, must have been prepared, in the course of a few days in late July 1948, by Shotwell personnel and Busby without the assistance of any member of Busby's staff.

CHARLES A. MCNEELAS,

*Attorney, Tax Division.*

Signed and sworn to before me this 6th day of November, 1956.

[SEAL]

W. E. HOUSE, *Notary Public.*

My Commission expires January 31, 1960.